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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,028	02/25/2004	Hiroki Hasegawa	58647-182	9051

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EXAMINER

ASTORINO, MICHAEL C

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,028

Applicant(s)

HASEGAWA ET AL.

Examiner

Michael C. Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-11 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152). |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The examiner acknowledges the amendment filed claims filed March 22, 2005, and the remarks by applicant filed March 22, 2005. Applicant has confirmed the Election of Species II claims 12-19, claims 1-11 are withdrawn, claim 19 is cancelled by amendment, claims 12-18 are currently amended, and claims 12-18 are pending. In addition, the examiner withdraws the previous claim objection of claim 12.

Claim Objections

Claim 12 is objected to because of the following informalities: in claim 12, line 2 "living body data measurement unit including a pedometer" should be amended to more accurately portray the invention and be in concert with the dependent claims. The examiner suggests, "One or more living body data measurement units, wherein at least one unit includes a pedometer." This would clarify claims 13, 16-18 as well. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mault US Patent Number 6,478,736 B1 and Stubbs et al. US Patent Number 6,736,759 B1, in view of Sutton US Patent Number 5,117,444 A.

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In regards to claim 12, Mault discloses a health care system (see figures 14a-b, 15 and 17), comprising:

a living body data measurement unit including a pedometer (sensors in figures 14a-b and 15);

a receiver unit (52) including a permanent magnet, an infrared ray receiving station, and a wireless receiving station, and said receiver unit includes a wireless receiving section (column 6, lines 1-30); and

a personal computer (84), a receiver unit includes a wireless receiving section which is normally in standby condition and which, upon receiving the living body data from the living body data measurement unit, acts to check whether there is any problem in the data, and if no, to acquire the living body data (column 3, lines 37-64), but does not disclose said personal computer is USB connected (column 10, lines 34-64) to the receiver unit.

However, Stubbs et al., a reference in an analogous art teaches a personal computer is USB connected (column 10, lines 34-64) to the receiver unit, and wherein said wireless receiving section which is normally in standby condition and which, upon receiving the living body data from the living body data measurement unit, checks whether there is any problem in the data, and if not, acquires the living body data (column 3, lines 37-64). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the communications between the PC and the receiving unit of Mault in view of the USB connection of Stubbs et al., since Stubbs et al. states the USB is an alternative to a wireless or wired connection and monitors the user of dangerous alert conditions while exercising/physically training the user's body.

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Mault and Stubbs et al. disclose a pedometer (element number 60, column 9, lines 45-57), but does not disclose the means of which the pedometer functions. However, Sutton et al. a reference in an analogous art discloses an alternative pedometer which includes “wherein said pedometer includes a reed switch which turns on, responsive to the permanent magnet, when said pedometer is placed on said receiver unit, and sends the living body data to said receiver unit by infrared ray”, (figure 5, element numbers 10/50, and 62). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the pedometer functionality of Sutton et al. in view of the pedometer of Mault and Stubbs et al., since Sutton et al. states in the abstract that the pedometer provides maximum calibration accuracy regardless of operational or stride artifact variations.

Claim 13. A health care system according to claim 12 in which said receiver unit receives the living body data from the living body data measurement unit via electromagnetic wave or infrared ray (Stubbs et al., 64 and/or Mault column 6, lines 20-30).

Claim 14. A health care system according to claim 12 in which said living body data measurement unit includes at least one of a body fat meter (Mault, element number 76), and a sphygmomanometer.

Claim 15. A health care system according to claim 12 wherein the living body data measurement unit comprises a body fat meter, and said living body data includes at least one of body weight, body fat rate, body fat mass, basal metabolism, total energy consumption and visceral fat level.

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(Mault, element numbers 76, 72, 60, figures 6-12 and 15).

Claim 16. A health care system according to claim 12 wherein said living body data includes at least one of number of steps, distance, calorie consumption and amount of burned fat. (Stubbs et al., column 3, lines 6-13 or pedometer of Mault figure 7-12, and 14).

Claim 18. A health care system according to claim 12, wherein the living body data measurement unit comprises a body fat meter or the sphygmomanometer, and it sends the living body data to the receiver unit in frame synchronized manner upon depressing a data transmission button after measurement is done. (Mault inherent via PDA, column 6, lines 1-30 and figure 15, 76 a body fat meter)

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mault US Patent Number 6,478,736 B1, Stubbs et al. US Patent Number 6,736,759 B1, and Sutton US Patent Number 5,117,444 A as applied to claim 12 above, and further in view of Mault US Patent Number 6,790,178 A1.

Claim 17. A health care system according to claim 12 wherein the living body data measurement unit said living body data includes at least one of highest blood pressure, lowest blood pressure and *pulse rate*. (Stubbs et al., column 3, lines 6-13, or Mault 74), although Mault '736 discloses interacting with one or more monitors and including "other parameters" but lacks specific teaching of a sphygmomanometer. However, Mault '178, a synonymous system with Mault '736, and as an alternative monitoring unit discloses the use of a blood pressure measuring

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device in figure 19. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the accessories sensing devices of Mault '736, Stubbs et al. and Sutton in view of Mault '178, since Mault '178 states the PDA being interconnected with a variety of accessories and provide the necessary computing, control and display functions for the accessory, thereby reducing the cost of the accessory as compared to a stand along device.

Response to Arguments

Applicant's arguments with respect to claims 12-18 have been considered but are moot in view of the new ground(s) of rejection.

The applicant argues that the references as combined can not properly reject claim 12, specifically the added limitation, of ""wherein said pedometer includes a reed switch which turns on, responsive to the permanent magnet, when said pedometer is placed on said receiver unit, and sends the living body data to said receiver unit by infrared ray." However, the added limitation can be interpreted in two ways primarily because the use of the word "and". One way is that the pedometer sends data as a conditional to the reed switch turning on, and the other is that the turning on of reed switch is not conditional on the sending of data, merely the two functions are independent. Although, certain aspects of the specification at best allude to the conditional, the specification does not rule out the non-conditional-two independent functions. Particularly, the illustration of figure 1, and the remaining figures do not even illustrate the functions of limitation either conditional or non-conditional. The broadest reasonable interpretation of the limitation is the latter- that the sending of data is not conditional, that the

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two functions being independent - which is taught by the obviousness rejection. (see 103 rejection above for specifics)

The applicant is invited to clarify the specification and drawings to spell out the distinction. However, the examiner requests the applicant be observant not to introduce new matter.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Astorino
June 1, 2005


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